

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 5. DEPARTMENT OF ADMINISTRATION

#### PERSONNEL ADMINISTRATION

#### PREAMBLE

1. Sections Affected  
R2-5-903
- Rulemaking Action  
New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statute: A.R.S. § 41-763(6)  
Implementing statute: A.R.S. § 41-783(14)
3. The effective date for the rules:  
June 7, 1996
4. A list of all previous notices that appearing in the Register addressing the final rule:  
Notice of Rulemaking Docket Opening:  
2 A.A.R. 883, February 2, 1996  
Notice of Proposed Rulemaking:  
2 A.A.R. 1212, March 15, 1996
5. The name and address of agency personnel with whom persons may communicate regarding the rule:  
Name: Gordon Carrigan, Human Resources Generalist  
Address: Department of Administration  
1831 West Jefferson, Room 107  
Phoenix, Arizona 85007  
Telephone: (602) 542-4784  
Fax: (602) 542-4507
6. An explanation of the rule, including the agency's reasons for initiating the rule:  
The proposed rule is a new Section that establishes procedures for initiating and implementing a temporary reduction in force of state service employees for no more than 30 working days due to a temporary lack of federal or state funding for state programs. Because recent events related to the federal budget that could affect state services indicated a need for this rule, it was certified as an emergency rule effective January 4, 1996. This rulemaking will establish the rule as permanent and replace the emergency rule, which will expire on or about July 2, 1996.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:  
Not applicable.
8. The summary of the economic, small business, and consumer impact statement:
  - A. Proposed rulemaking  
The rule establishes procedures for initiating and implementing a temporary reduction in force of state service employees for no more than 30 working days due to a temporary lack of federal or state funding for state programs.
  - B. Information contained in this report  
The rule directly affects state service employees and has an indirect impact on small businesses and consumers. State service employees selected for temporary reduction in force will lose income. The overall negative impact on small businesses and consumers will depend upon the level of services that is affected by the length of time that the reduction continues.

**Notices of Final Rulemaking**

C. Name and address of agency employee who can submit additional data on the information included in this statement  
 Gordon Carrigan, Human Resources Generalist  
 1831 West Jefferson, Room 107  
 Phoenix, Arizona  
 (602) 542-4784

9. A description of the changes between the proposed rules, and final rules:  
 None.
10. A summary of the principal comments and the agency response to them:  
 Several telephone calls were received requesting clarification, but there were no comments submitted by the public.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:  
 Not applicable.
12. Incorporations by reference and their location in the rules  
 None.
13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of these final rules:  
 Yes.  
 2 A.A.R. 802, January 26, 1996
14. The full text of the rules follows:

**TITLE 2. ADMINISTRATION**

**CHAPTER 5. DEPARTMENT OF ADMINISTRATION  
 PERSONNEL ADMINISTRATION**

**ARTICLE 9. SEPARATIONS**

Section  
R2-5-903. Temporary Reduction in Force

**ARTICLE 9. SEPARATIONS**

R2-5-903. Temporary Reduction in Force

A. General

1. When funding necessary to pay employees is suspended or reduced, a temporary reduction in force may be conducted and shall be processed in accordance with the provisions of this Section.
2. If funding to pay employees is suspended or reduced, an agency head may request approval from the Director to conduct a temporary reduction in force. The agency head shall submit to the Director the plan and procedure the agency proposes to follow. The plan and procedure shall state:
  - a. The reason for the temporary reduction in force;
  - b. Each budget program affected;
  - c. The classes affected;
  - d. The amount of shortfall, total number of employees affected, and name and Fair Labor Standards Act status of each affected employee;
  - e. The unit, for example, budget program, class, class series or agency, subject to or affected by the temporary reduction in force and number of employees in the affected unit;
  - f. When the agency was notified of the funding suspension or reduction;
  - g. Assessment of the impact of a temporary reduction in force on the agency's ability to deliver essential services;
  - h. What alternatives have been considered and why they were rejected;

- i. The number of funded, vacant positions within the agency, what efforts the agency has made to place employees in other positions within the agency or other state agencies;
- j. Expected outcome of the proposed action; and
- k. A summary of funding discussions with the Department of Administration Finance Division.
3. An agency head shall not initiate or implement a personnel action that will affect the temporary reduction in force after the date of the agency head's request to the Director for a temporary reduction in force except to process a personnel action to accomplish, or to assist in accomplishing, the purpose of the temporary reduction in force. The agency head shall give employees subject to a temporary reduction in force preference for placement in any funded vacant positions within the agency for which they qualify. Preference for placement shall be based upon retention points.
4. A temporary reduction in force shall not exceed 30 working days from the date of implementation of the plan. If the agency is advised at any time during the temporary reduction in force is in effect that funding for affected positions will be terminated or permanently reduced, an agency head shall plan and conduct a reduction in force as prescribed by R2-5-902, unless the agency makes other arrangements to delay a reduction in force.
5. An agency head shall not approve the use of any paid leave except compensatory leave for an employee who is designated for temporary reduction in force. An approved paid or unpaid leave in progress for an employee who is designated for temporary reduction in force shall be cancelled effective the day that the temporary reduction in force begins. The agency head shall notify the affected employee in writing of the cancellation of the approved leave.
6. Pay for time on temporary reduction in force may only be

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

restored to an employee if, and to the extent which, federal or state law specifically authorizes payment.

7. An employee affected by a temporary reduction in force pursuant to this Section shall return to work in the same position occupied at the start of the temporary reduction in force if funding is fully restored, sufficient attrition has occurred, or an alternate source of funding becomes available.
  8. Failure or inability to return to work on the effective date of return may be considered a resignation, result in separation without prejudice, or be cause for dismissal as determined by the agency head consistent with the agency policies, procedures, and guidelines. An employee who is unable to return to work due to a non-job-related medical condition shall provide to the agency had a written statement from a licensed health care practitioner substantiating the employee's inability to return to work.
- B. Administration.** The Director shall administer a temporary reduction in force in the following manner:
1. In an agency affected by a temporary reduction in force, employees shall be separated in the order listed below before any action is taken that affects permanent-status employees, providing the separation of these employees will accomplish, or assist in accomplishing, the purpose of the temporary reduction in force:
    - a. Permanent-status employees who volunteer for a temporary reduction in force,
    - b. Provisional employees,
    - c. Clerical pool employees,
    - d. Temporary employees,
    - e. Seasonal employees,
    - f. Original probationary employees,
    - g. Limited employees.
  2. Retention points shall be used to identify full-time or part-time permanent-status employees to be placed on temporary reduction in force based on the employee's relative standing on the retention list. Identification of employees to be placed 1st on temporary reduction in force shall begin with the employee with the lowest number of retention points.
  3. Retention points shall be based on length of state service and performance, calculated in accordance with subsections (C), (D), and (E) below.
  4. Employees on promotional probation, detail to special duty, or underfilling a position shall compete for retention in their promotional probation, detail to special duty, or underfill classes.
- C. Calculation of retention points for length of service.**
1. Each permanent-status employee shall be awarded 1 retention point for each year of state service. Service of more than 6 months shall be counted as 1 year. Service of 6 months or less shall not be counted.

2. Periods of service as a state service employee prior to a resignation or dismissal shall not be counted.
  3. Periods of state service as a provisional, seasonal, temporary, limited, or clerical pool employee shall not be counted.
  4. Periods of military leave with or without pay shall be counted.
  5. Periods of service on mobility assignment shall be counted.
  6. Continuous uninterrupted service in a position prior to its transfer to state service by legislative action or otherwise from a budget unit of the state shall be counted.
- D. Calculation of retention points for performance.** The most recent performance evaluation concluded prior to the date of the request for temporary reduction in force shall be used in determining retention points. If any employee has not had a performance evaluation in the past 12 months, the employee shall be awarded 12 retention points. Retention points for performance shall be awarded as follows:
1. Each employee having an overall performance evaluation of standard or above shall be awarded 12 retention points.
  2. Each employee having an overall performance evaluation of less than standard shall be awarded 0 retention points.
- E. Resolution of ties.** Ties in total retention points shall be broken in the following manner and order:
1. Tie shall be broken by the employee with the highest overall performance rating in the class currently held by the employee.
  2. If a tie continues to exist, the tie shall be broken by the employee with the earlier initial state service hire date of record.
  3. If a tie continues to exist, it shall be broken by lot.
- F. Notice of separation due to temporary reduction in force.** The agency shall provide the employee written notice of separation as soon as practical after the plan is approved. The notice shall include, at a minimum, the effective date of the action and the right to request a review of the separation.
- G. When funding necessary to pay the employee is restored, the temporary reduction in force expires, or the agency head otherwise determines that an employee may be recalled, the agency shall provide the employee written notice.**
- H. Employee request for review.** An accelerated review process shall be established for temporary reduction in force. No later than 3 working days after receipt of a temporary reduction in force notice, an employee may submit to the agency head a written request for a review of the determination resulting in the employee's temporary reduction in force and a proposed resolution. The agency head shall respond to the employee within 3 working days after receipt of the request. The request for review shall not delay implementation of the temporary reduction in force.